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Signed and Filed: October 4, 2023

HANNAH L. BLUMENSTIEL

U.S. Bankruptcy Judge

[Proposed] Counsel to the Debtor

UNITED STATES BANKRUPTCY COURT

NORTHERN DISTRICT OF CALIFORNIA

SAN FRANCISCO DIVISION

In re:

INTERNATIONAL LONGSHORE
AND WAREHOUSE UNION,

Debtor.

Case No. 23-30662-HLB

Chapter 11

**INTERIM ORDER APPROVING
DEBTOR'S EMERGENCY MOTION FOR
AN ORDER AUTHORIZING THE
DEBTORS TO (A) CONTINUE
OPERATING CASH MANAGEMENT
SYSTEM, (B) HONOR CERTAIN
PREPETITION OBLIGATIONS RELATED
THERETO, (C) MAINTAIN EXISTING
BUSINESS FORMS, AND (D) GRANTING
RELATED RELIEF, ON AN INTERIM
BASIS**

The Debtor's Emergency Motion for Entry of Interim and Final Orders Authorizing the Debtors to (A) Continue Operating Cash Management System, (B) Honor Certain Prepetition Obligations Related Thereto, (C) Maintain Existing Business Forms, and (D) Granting Related Relief [Docket No. 8] (the "Motion"),¹ filed on October 2, 2023 by the International Longshore and Warehouse Union (the "Debtor"), the debtor and debtor in possession in the above-captioned bankruptcy case (the "Chapter 11 Case"), came before the Court for hearing on October 4, 2023, at 10:00 a.m. (Pacific Time). Appearances were as noted on the record. Based upon the Court's review of the Motion, the declarations and other pleadings filed in support of the Motion, the arguments of counsel at the hearing on the Motion, and all pleadings and evidence of record in this case, and finding that good cause exists for granting the relief requested on an interim basis,

¹ A capitalized term used but not defined herein shall have the meaning ascribed to it in the Motion.

1 **IT IS HEREBY ORDERED THAT:**

2 1. The Motion is **GRANTED**, as set forth herein, on an **interim** basis.

3 2. The Debtor is authorized, but not directed, to: (a) continue operating the Cash
4 Management System as described in the Motion; (b) honor its prepetition obligations related thereto;
5 (c) use, in their present form, all preprinted correspondence and Business Forms (including letterhead)
6 without reference to the Debtor's status as a debtor in possession; (d) continue to use, with the same
7 account numbers, the Bank Accounts in existence as of the Petition Date, including those accounts
8 identified on **Exhibit C** to the Motion, and need not comply with certain guidelines relating to bank
9 accounts set forth in the U.S. Trustee Guidelines (to the extent applicable); (e) treat the Debtor Bank
10 Accounts for all purposes as accounts of the Debtor as debtor in possession; (f) deposit funds into and
11 withdraw funds from the Bank Accounts by all usual means, including checks, wire transfers, and
12 other debits; (g) maintain and use its credit card account at Union Business Bank in the ordinary course
13 of business; and (h) pay the Bank Fees, including any prepetition amounts and any ordinary course
14 Bank Fees incurred in connection with the Bank Accounts and to otherwise perform its obligations
15 under the documents governing the Bank Accounts; *provided* that in the case of each of (a) through
16 (h), such action is taken in the ordinary course of business and consistent with historical practices.

17 3. The Banks are authorized to continue to maintain, service, and administer the Bank
18 Accounts as accounts of the Debtor as debtor in possession, without interruption and in the ordinary
19 course of business consistent with historical practices, and to receive, process, honor, and pay, to the
20 extent of available funds, any and all checks, drafts, wires, credit card payments, and ACH transfers
21 issued and drawn on the Bank Accounts after the Petition Date by the holders or makers thereof, as
22 the case may be, and all such banks and financial institutions are authorized to rely on the Debtor's
23 designation of any particular check or electronic payment request as approved by this Interim Order;
24 *provided* that the Debtor shall only instruct or request any Banks to pay or honor any check, draft, or
25 other payment item issued on a Bank Account prior to the Petition Date but presented to such Bank
26 for payment after the Petition Date as authorized by an order of the Court.

27 4. The Banks are authorized to debit the Debtor's accounts in the ordinary course of
28 business, consistent with historical practices, without the need for further order of this Court for:

1 (a) all checks drawn on the Debtor's accounts that are cashed at such Bank's counters or exchanged
2 for cashier's checks by the payees thereof prior to the Petition Date; (b) all checks or other items
3 deposited in one of Debtor's accounts with such Bank prior to the Petition Date that have been
4 dishonored or returned unpaid for any reason, together with any fees and costs in connection therewith,
5 to the same extent the Debtor was responsible for such items prior to the Petition Date; and (c) all
6 undisputed prepetition amounts outstanding as of the date hereof, if any, owed to any Bank as service
7 charges for the maintenance of the Cash Management System.

8 5. Any existing agreements between or among the Debtor, the Banks, and other parties
9 shall continue to govern the postpetition cash management relationship between the Debtor and the
10 Bank, and all of the provisions of such agreements, including, without limitation, the termination, fee
11 provisions, rights, benefits, offset rights, and remedies afforded under such agreements shall remain
12 in full force and effect unless otherwise ordered by the Court, and the Debtor and the Banks may,
13 without further order of this Court, agree to and implement changes to the Cash Management System
14 and cash management procedures in the ordinary course of business, consistent with historical
15 practices and the Debtor's prepetition secured debt agreements, including, without limitation, the
16 opening and closing of bank accounts, subject to the terms and conditions of this Interim Order.

17 6. Any requirement of section 345(b) is hereby waived until the Final Hearing.

18 7. For the Banks at which the Debtor holds Bank Accounts that are party to a Uniform
19 Depository Agreement with the U.S. Trustee, within fifteen (15) days of the date of entry of this
20 Interim Order, the Debtor shall: (a) contact such bank, (b) provide such bank with the Debtor's
21 employer identification number, and (c) identify each of its Bank Accounts held at such bank as being
22 held by a debtor in possession in this Chapter 11 Case. For any Bank at which the Debtor holds Bank
23 Accounts that are not party to a Uniform Depository Agreement with the U.S. Trustee, the Debtor
24 shall use its good-faith efforts to cause the Bank to execute a Uniform Depository Agreement in a
25 form prescribed by the U.S. Trustee within thirty (30) days of the date of this Interim Order.

26 8. Notwithstanding the foregoing, or anything to the contrary contained herein or the
27 Motion, the Debtor shall cause, on or before the Final Hearing (as defined below), the cash on deposit
28 in the Money Market Account (Account No. 0045) at United Business Bank to be transferred to a new

1 FDIC insured account at a United States Trustee authorized depository. For the avoidance of doubt,
2 the relief requested in this paragraph and this Order is without prejudice to the United States Trustee
3 to object or otherwise oppose the relief requested in the Motion on a final basis at the Final Hearing.

4 9. Subject to the terms hereof, the Debtor is authorized, but not directed, in the ordinary
5 course of business consistent with historical practices to open any new bank accounts or close any
6 existing Bank Accounts and enter into any ancillary agreements, provided that the Debtor gives notice
7 to the U.S. Trustee within 15 days of opening or closing a bank account. The relief granted in this
8 Interim Order is extended to any new bank account opened by the Debtor in the ordinary course of
9 business after the date hereof, which account shall be deemed a "Bank Account," and to the bank at
10 which such account is opened, which bank shall be deemed a "Bank," provided that any new domestic
11 bank account opened by the Debtor shall be established at an institution that is a party to a Uniform
12 Depository Agreement with the U.S. Trustee or is willing to immediately execute such a Uniform
13 Depository Agreement.

14 10. All banks maintaining any of the Bank Accounts that are provided with notice of this
15 Interim Order shall not honor or pay any bank payments drawn on the listed Bank Accounts or
16 otherwise issued before the Petition Date; *provided, however*, that any such bank shall not be found to
17 be in violation of this Interim Order nor liable to the Debtor or its estate should any such bank honor
18 or pay any bank payment: (a) in a good faith belief that the Court has authorized such payment to be
19 honored, or (b) as the result of a mistake made despite implementation of customary item handling
20 procedures.

21 11. The Banks are authorized, without further order of this Court, to deduct any applicable
22 fees from the applicable Bank Accounts in the ordinary course of business consistent with historical
23 practices and pursuant to the applicable agreements governing each Bank Account.

24 12. The Banks are authorized, without further order of this Court, to charge back to the
25 appropriate accounts of the Debtor any amounts resulting from returned checks or other returned items,
26 including returned items that result from ACH transactions, wire transfers, or other electronic transfers
27 of any kind, regardless of whether such returned items were deposited or transferred prepetition or
28 postpetition and regardless of whether the returned items relate to prepetition or postpetition items or

1 transfers, including, without limitation, on account of checks that have been dishonored or returned as
2 a result of insufficient funds in the Bank Accounts, in each case to the same extent the Debtor was
3 responsible for such items prior to the Petition Date.

4 13. Subject to the terms set forth herein, any bank, including the Banks, may rely upon the
5 representations of the Debtor with respect to whether any check, draft, wire, or other transfer drawn
6 or issued by the Debtor prior to the Petition Date should be honored pursuant to any order of this
7 Court, and no bank that honors a prepetition check or other item drawn on any account that is the
8 subject of this Interim Order: (a) at the direction of the Debtor, (b) in a good-faith belief that this
9 Court has authorized such prepetition check or item to be honored, or (c) as a result of a mistake made
10 despite implementation of reasonable customary handling procedures, shall be deemed to be nor shall
11 be liable to the Debtor, its estate, or any other party on account of such prepetition check or other item
12 being honored postpetition, or otherwise deemed to be in violation of this Interim Order.

13 14. Any banks, including the Banks, are further authorized to honor the Debtor's directions
14 with respect to the opening and closing of any Bank Account and accept and hold, or invest, the
15 Debtor's funds in accordance with the Debtor's instructions; *provided* that the Banks shall not have
16 any liability to any party for relying on such representations to the extent such reliance otherwise
17 complies with applicable law.

18 15. Nothing contained in the Motion or this Interim Order shall be construed to: (a) create
19 or perfect, in favor of any person or entity, any interest in cash of the Debtor that did not exist as of
20 the Petition Date; or (b) alter or impair the validity, priority, enforceability, or perfection of any
21 security interest or lien or setoff right, in favor of any person or entity, that existed as of the
22 Petition Date.

23 16. Nothing contained in the Motion or this Interim Order, and no action taken pursuant to
24 the relief requested or granted (including any payment made in accordance with this Interim Order),
25 is intended as or shall be construed or deemed to be: (a) an admission as to the amount of, basis for,
26 or validity of any claim against the Debtor under the Bankruptcy Code or other applicable non-
27 bankruptcy law; (b) a waiver of the Debtor's or any other party in interest's right to dispute any claim
28 on any grounds; (c) a promise or requirement to pay any particular claim; (d) an implication,

1 admission, or finding that any particular claim is an administrative expense claim, other priority claim,
2 or otherwise of a type specified or defined in the Motion or this Interim Order; (e) a request or
3 authorization to assume, adopt, or reject any agreement, contract, or lease pursuant to section 365 of
4 the Bankruptcy Code; (f) an admission as to the validity, priority, enforceability or perfection of any
5 lien on, security interest in, or other encumbrance on property of the Debtor's estate; or (g) a waiver
6 or limitation of any claims, causes of action, or other rights of the Debtor or any other party in interest
7 against any person or entity under the Bankruptcy Code or any other applicable law.

8 17. The Debtor is authorized, but not directed, to issue postpetition checks, or to effect
9 postpetition fund transfer requests, in replacement of any checks or fund transfer requests that are
10 dishonored as a consequence of this Chapter 11 Case with respect to prepetition amounts owed in
11 connection with the relief granted herein.

12 18. Nothing in this Interim Order authorizes the Debtor to accelerate any payments not
13 otherwise due.

14 19. The contents of the Motion satisfy the requirements of Bankruptcy Rule 6003(b).

15 20. Notice of the Motion as provided therein shall be deemed good and sufficient notice of
16 such Motion, and the requirements of Bankruptcy Rule 6004(a) and the Local Rules are satisfied by
17 such notice.

18 21. Notwithstanding Bankruptcy Rule 6004(h), the terms and conditions of this Interim
19 Order are immediately effective and enforceable upon its entry.

20 22. The Debtor is authorized to take all actions necessary to effectuate the relief granted in
21 this Interim Order in accordance with the Motion.

22 23. A final hearing to consider the relief requested in the Motion shall be held on November
23 9, 2023 at 10:00 a.m. (Pacific Time) (the "Final Hearing") and any objections or responses to the
24 Motion shall be filed and served so as to be actually received on or prior to November 2, 2023.

25 24. The Court retains exclusive jurisdiction with respect to all matters arising from or
26 related to the implementation, interpretation, and enforcement of this Interim Order.

27 **** END OF ORDER ****

1 **APPROVED AS TO FORM:**

2 /s/ Jared A. Day

3 Jared A. Day, Trial Attorney
4 U.S. Department of Justice
5 Office of the U.S. Trustee, Region 17
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Court Service List

Registered ECF participants.

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